

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:19-CT-03234-FL

STEVE M. TOLBERT,

Plaintiff,

v.

NCDPS MEDICAL STAFF, DR. HUSSEIN,
DR. COLEMAN, DR. URENE, DR.
DEMEKO, DR. STEWART, AND JOHN
DOES 1-2,

Defendants.

**DEFENDANT ROBERT J. UHREN, JR.,
M.D.'S STATEMENT OF MATERIAL
FACTS**

NOW COMES Defendant Robert J. Uhren, Jr., M.D. ("Dr. Uhren"), by and through counsel, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and Local Civil Rule 56.1 of the United States District Court for the Eastern District of North Carolina, and respectfully submits this Statement of Material Facts ("Statement") as to which there is no genuine issue to be tried, as a supplement to his Memorandum and Affidavit in support of his Motion for Summary Judgment. In accordance with the Local Rule, an Appendix with any evidence outside the pleadings in this matter is being submitted for the Court's consideration.

This case involves an inmate proceeding *pro se* under 42 U.S.C. § 1983. As a result, discovery has been limited, and no depositions have been taken. Due to Plaintiff's incarcerated status, there has been no opportunity to confer, and this Statement is acknowledging undisputed facts from the pleadings and medical records, and information that is publicly available. Plaintiff's medical care is at issue in this case, and the medical records upon which Dr. Uhren relies are attached to his Affidavit as exhibits.

1. Steve M. Tolbert (“Plaintiff”), a convicted and sentenced prisoner in the custody of the North Carolina Department of Public Safety - Division of Adult Correction (“NCDPS”), serving a fourteen-year sentence for felony breaking and entering, larceny, and forgery. *See* NCDPS Offender Public Information, <https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=0409607&searchOffenderId=0409607&searchDOBRange=0&listurl=pagelistoffendersearchresults&listpage=1>.

1. Dr. Uhren is a licensed physician who was a contract physician for the NCDPS as a primary care provider and worked in his own family medicine private practice until approximately March 2018. Affidavit of Robert J. Uhren, Jr., M.D. (“Uhren Aff.”) ¶ 2.

2. During the time period at issue, Dr. Uhren only provided medical care to inmates at certain times when they or their charts were referred to him at Mountain View Correctional Institution, Avery-Mitchell Correctional Institution, and/or Craggy Correctional Center and, therefore, would have only treated inmate Tolbert, if at all, between the dates of August 1, 2013 through February 20, 2014, March 25, 2014 through May 1, 2014, January 22, 2015 through February 18, 2016, April 12, 2016 through February 23, 2017, June 13, 2017 through December 19, 2017, February 8, 2018 through July 17, 2018, and October 16, 2018 through February 1, 2019. Inmate Tolbert would have been treated by other health care providers and at other facilities during any other time period. Uhren Aff. ¶ 4.

3. On August 7, 2019, proceeding *pro se* and *in forma pauperis*, Plaintiff filed his Complaint without naming Dr. Uhren as a defendant or asserting any factual allegations pertaining to him. ([DE 1](#)). On September 12, 2019, the Court instructed Plaintiff to particularize his Complaint to include the identification of the prison medical staff responsible for his alleged injuries. ([DE 11](#)). On December 27, 2019, Plaintiff filed a Complaint in response to the Court’s

Order (“Amended Complaint”) elaborating on his claims, alleging Dr. Uhren (incorrectly identified in Plaintiff’s Amended Complaint as “Dr. Urene”) acted with deliberate indifference by failing to provide treatment adequate treatment for his foot pain and for failure to refer him to a specialist to address the same. ([DE 16](#)).

4. Contrary to Plaintiff’s allegations, however, Dr. Uhren’s summary judgement evidence establishes that he was not deliberately indifferent to Plaintiff’s serious medical need, but rather assessed Plaintiff on each occasion Plaintiff presented for treatment and prescribed appropriate treatment to address Plaintiff’s subjective complaints and foot-related symptoms based on Dr. Uhren’s objective examination, his training and experience, and his medical judgment. *See Uhren Aff.*, generally.

5. At no time did Dr. Uhren disregard the symptoms Plaintiff reported to him, but to the contrary, Dr. Uhren took appropriate action and made professional decisions and treatment plans pertaining to Plaintiff based on his medical judgment. *Uhren Aff.* ¶¶ 79, 80.

Respectfully submitted,

This 14th day of March, 2022.

WALKER, ALLEN, GRICE, AMMONS,
FOY, KLICK & MCCULLOUGH, L.L.P.

/s/ Elizabeth P. McCullough
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2022, I electronically filed the forgoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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I hereby certify that on the 14th day of March 2022, I electronically filed the forgoing document with the Clerk of the Court using the CM/ECF system and I mailed said document to the following non-CM/ECF participant:

Steve M. Tolbert, *pro se*
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